



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,858	08/22/2003	Steven Lowen	04843-043001	1524

26161 7590 01/04/2007
FISH & RICHARDSON PC
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

EXAMINER

LAMPRECHT, JOEL

ART UNIT	PAPER NUMBER
----------	--------------

3737

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/646,858

Applicant(s)

LOWEN ET AL.

Examiner

Joel M. Lamprecht

Art Unit

3737

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 10/2/06.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1, 2, 4, 5, 9-19, 21-23, and 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans et al (US 6858003) in view of Cosman (US 6662036).

Evans discloses a system including an optical system including two cameras (figure 2B, elements 38a and 38b), which are located outside of the body of a patient to provide motion tracking of a site (Col. 22, line 27). In one embodiment, passive elements are used to detect 3D motion of the site, which may be markers or IR reflectors (Col. 32, lines 40-46), so that light may be detected. A processor allows for data to be processed compensating for movement of the subject (figure 6, elements 552 and 554) wherein processor may be a computer (figure 4) and the system additionally includes a display (figure 6, element 556) and memory (figure 40A-I, element 1868). Evans, however, fails to disclose combination of the system with a scanning protocol.

Cosman also discloses a system for position or motion tracking wherein the positioning system uses two cameras for tracking including integrated sources of radiation in the form of LEDs in which the camera detects light reflected from four markers (Col. 7, lines 33-45 and figure 2). Cosman explicitly discloses a variety of markers and reflectors, such as reflecting spheres, and it would be an obvious

modification to use mirrors as the reflective surface disclosed by Cosman (Col. 4, lines 5-26). The system determines the position of the patient's body with respect to a treatment or imaging machine (abstract), such as an x-ray machine for diagnostic imaging, but may also be a CT, MRI, simulator, PET, or other imaging machine used in an analogous manner (Col. 11, lines 4-7). Motion may also be tracked when the patient is moved in a variety of ways, including translation in multiple directions, as shown in figure 5, and rotation, as shown in figure 1. The system may be used on any part of a patient's body, however it is explicitly shown that markers are put on both the head and chest of the patient (figures 5 and 11). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the disclosure of Evans in light of the reference by Cosman, as Cosman states it is advantageous to correlate scan data with camera data to enable desired positioning as well as an effective graphics display (Col. 2, lines 11-15).

3. Claims 3 and 24 rejected under 35 U.S.C. 103(a) as being unpatentable over Evans in view of Cosman as applied to claims 2 and 21 above, and further in view of Beetz, Jr., et al (US 6045677). Evans in view of Cosman, as discussed above,

Substantially discloses the invention as claimed, however fails to explicitly disclose the properties of the cameras used. However, a variety of cameras are known in the imaging art. For example, a microchannel plate is well known in the art for used in imaging apparatus (Col. 4, line 40) such as a variety of physical science instrumentation, streak cameras as they have immunity to magnetic fields (Col. 2, line 51). Therefore, such a camera would function in a magnetic resonance scanner with

field strength of more than 100 Gauss without loss of accuracy. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the disclosures of Evans and Cosman in light of the teachings in the reference by Beetz, as it would be obviously necessary to use a camera that can withstand the field strength of an MRI if the camera system is to be used in an MRI, as disclosed by Cosman.

4. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans in view of Cosman as applied to claim 5 above, and further in view of Schmitz (US 6050724). Evans in view of Cosman, as discussed above, substantially disclose the invention as claimed, however fail to disclose the configuration of the two cameras in relation to the imaging system. Schmitz also discloses a system using two cameras and an imaging device for position detection and further discloses that the two infrared CCD cameras are mounted to the side of the imaging system (Col. 5, lines 32-33) as shown in figure 1. The axis of the imaging system runs directly through the center of the imaging system, therefore creating a 45-degree angle between each camera and the axis of the scanner. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the disclosure of Evans in view of Cosman in light of the teachings in the reference by Schmitz, as mounting the cameras on the imaging system itself advantageously eliminates one calibration or registration step, as the two systems are rigidly registered to each other.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Evans in view of Cosman as applied to claim 1 above, and further in view of Nakagawa, et al (US 2002/0122117). Evans in view of Cosman, as discussed above, substantially discloses

Art Unit: 3737

the invention as claimed, however fails to explicitly disclose the accuracy of the cameras used. A variety of cameras are well known in the imaging art, such as the one disclosed by Nakagawa. Nakagawa discloses a camera device for imaging which is capable of being used for accurate measurement. The CCD is capable of accuracy within 0.1mm or less (paragraph 109). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the disclosures of Evans and Cosman in light of the reference by Nakagawa, as it would be an obvious advantage to use a high accuracy camera, as Nakagawa states for measurement, for use in a medical or surgical system as the measurements and positioning obtained is critical to the health of the patient.

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Evans in view of Cosman as applied to claim 14 above, and further in view of Ward, et al ("Prospective Multiaxial Motion Correction for fMRI", Magnetic Resonance in Medicine, 2000). Evans in view of Cosman, as discussed above, substantially discloses the invention as claimed, however fails to disclose testing motion correction algorithms. Ward discloses a system for motion correction in an imaging system wherein testing of the system and the motion correction algorithms used is done using computerized motion phantoms. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the disclosures of Evans and Cosman in light of the teachings in the reference by Ward to include testing motion correction algorithms, as Ward states that motion is a known problem in MRI images and testing algorithms allow for improved motion correction of the images.

Response to Arguments

3. Applicant's arguments filed 9/22/06 have been fully considered but they are not persuasive. The Applicant argued that their invention is patentable over the art of record because neither the references by Evans, et al nor the reference by Cosman disclose "updating a scanning protocol to compensate for the movement of the subject". The Examiner disagrees. Cosman discloses updating of a scanning protocol definitively in Column 7 Lines 6-22, where the protocol is updated in lieu of the motion of a patient's internal organs moving. Thus, Cosman does indeed disclose "updating" a scanning protocol based on radiation by "ensuring that the patient receives treatment even though the patient's internal organs are moving". Therefore, the reference by Cosman ('036) does indeed disclose a method of updating a scanning protocol to compensate for the motion of a subject.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

Art Unit: 3737

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joel M. Lamprecht whose telephone number is (571) 272-3250. The examiner can normally be reached on Monday-Friday 7:30AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on (571)272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


12/18/06


ELENI MANTIS MERCADER
SUPERVISORY PATENT EXAMINER